

Union Calendar No. 92

99TH CONGRESS
1ST SESSION**H. R. 1868****[Report No. 99-80, Parts I and II]**

To amend the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions of that Act.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 1985

Mr. MOORE (for himself, Mr. WAXMAN, Mr. STARK, Mr. GRADISON, Mr. RANGEL, Mr. PEPPER, Mr. GEPHARDT, Mr. WYDEN, Mr. MADIGAN, Mr. MCGRATH, Mr. DAUB, Mr. DOWNEY of New York, Ms. KAPTUR, Mr. SABO, Mr. CONYERS, Mr. BILIRAKIS, Mr. MRAZEK, and Mr. MILLER of California) introduced the following bill; which was referred jointly to the Committees on Ways and Means and Energy and Commerce

MAY 23, 1985

Additional sponsors: Mr. PENNY, Mr. BEILENSEN, Mr. SMITH of Florida, Mr. HYDE, Mr. BEDELL, Mrs. JOHNSON, Mr. HUGHES, Mr. GARCIA, Mr. VENTO, Mr. GREEN, Mr. GLICKMAN, Mr. BONIOR of Michigan, Mrs. COLLINS, Mr. BERMAN, Mr. FAZIO, Mr. ROSE, Mr. SPRATT, Mr. SCHEUER, Mr. PICKLE, Mr. BOEHLERT, Mr. SOLARZ, Mr. LEVINE of California, Mr. PANNETTA, Mr. BIAGGI, Mr. WORTLEY, Mr. LEHMAN of Florida, Mr. KOLTER, Mrs. BENTLEY, Mr. WHEAT, Mr. DANNEMEYER, Mr. MILLER of Washington, Mr. FRENZEL, Mr. STENHOLM, Mr. FISH, Mr. MORRISON of Connecticut, Mr. DONNELLY, Mr. WOLPE, Mrs. SCHNEIDER, Mr. FLORIO, Mr. BUS-TAMANTE, Mr. TORRES, Mr. FORD of Tennessee, Ms. OAKAR, and Mr. SOLOMON

MAY 10, 1985

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

MAY 23, 1985

Reported from the Committee on Energy and Commerce with an amendment,
committed to the Committee of the Whole House on the State of the Union,
and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on April 2, 1985]

A BILL

To amend the Social Security Act to protect beneficiaries under
the health care programs of that Act from unfit health care
practitioners, and otherwise to improve the antifraud provi-
sions of that Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 *SECTION 1. SHORT TITLE; REFERENCES IN ACT.*

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
5 *“Medicare and Medicaid Patient and Program Protection*
6 *Act of 1985”.*

The text of the
amendments to be
inserted by both
committees is
identical.

7 (b) *AMENDMENTS TO THE SOCIAL SECURITY ACT.*—
8 *Except as otherwise specifically provided, whenever in this*
9 *Act an amendment is expressed in terms of an amendment to,*
10 *or repeal of, a section or other provision, the reference shall be*
11 *considered to be made to a section or other provision of the*
12 *Social Security Act.*

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- Sec. 8. Miscellaneous and conforming amendments.
- Sec. 9. Clarification of medicaid moratorium provisions of Deficit Reduction Act of 1984.
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1 **SEC. 2. EXCLUSION FROM MEDICARE AND STATE HEALTH CARE**
2 **PROGRAMS.**

3 *Section 1128 (42 U.S.C. 1320a-7) is amended to read*
4 *as follows:*

5 **"EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES**
6 **FROM PARTICIPATION IN MEDICARE AND STATE**
7 **HEALTH CARE PROGRAMS**

8 *"SEC. 1128. (a) MANDATORY EXCLUSION.—The Sec-*
9 *retary shall exclude the following individuals and entities*
10 *from participation in any program under title XVIII and*
11 *shall direct that the following individuals and entities be ex-*
12 *cluded from participation in any State health care program:*

13 *"(1) CONVICTION OF PROGRAM-RELATED*
14 *CRIMES.—Any individual or entity that has been con-*
15 *victed of a criminal offense related to the delivery of an*
16 *item or service under title XVIII or under any State*
17 *health care program (as defined in subsection (h)).*

18 *"(2) CONVICTION RELATING TO PATIENT*
19 *ABUSE.—Any individual or entity that has been con-*
20 *victed, under Federal or State law, of a criminal of-*

1 *fense relating to neglect or abuse of patients in connec-*
2 *tion with the delivery of a health care item or service.*

3 “(b) *PERMISSIVE EXCLUSION.*—*The Secretary may*
4 *exclude the following individuals and entities from participa-*
5 *tion in any program under title XVIII and may direct that*
6 *the following individuals and entities be excluded from par-*
7 *ticipation in any State health care program:*

8 “(1) *CONVICTION RELATING TO FRAUD.*—*Any*
9 *individual or entity that has been convicted, under*
10 *Federal or State law, in connection with the delivery*
11 *of a health care item or service or with respect to any*
12 *act or omission in a program operated by or financed*
13 *in whole or in part by any Federal, State, or local*
14 *government agency, of a criminal offense relating to*
15 *fraud, theft, embezzlement, breach of fiduciary respon-*
16 *sibility, or financial abuse.*

17 “(2) *CONVICTION RELATING TO OBSTRUCTION*
18 *OF AN INVESTIGATION.*—*Any individual or entity*
19 *that has been convicted, under Federal or State law, in*
20 *connection with the interference or obstruction of any*
21 *investigation into any criminal offense described in*
22 *paragraph (1) or in subsection (a).*

23 “(3) *CONVICTION RELATING TO CONTROLLED*
24 *SUBSTANCE.*—*Any individual or entity that has been*
25 *convicted, under Federal or State law, of unlawful*

1 *manufacture, distribution, prescription, or dispensing*
2 *of a controlled substance or other criminal offense re-*
3 *lating to a controlled substance.*

4 “(4) *LICENSE REVOCATION OR SUSPENSION.—*
5 *Any individual or entity—*

6 “(A) *whose license to provide health care has*
7 *been revoked or suspended by any State licensing*
8 *authority, or who otherwise lost such a license, for*
9 *reasons bearing on the individual’s or entity’s*
10 *professional competence, professional conduct, or*
11 *financial integrity, or*

12 “(B) *who surrendered such a license while a*
13 *formal disciplinary proceeding was pending before*
14 *such an authority and the proceeding concerned*
15 *the individual’s or entity’s professional compe-*
16 *tence, professional conduct, or financial integrity.*

17 “(5) *EXCLUSION FROM FEDERAL HEALTH CARE*
18 *PROGRAM.—Any individual or entity which has been*
19 *suspended or excluded from participation, or otherwise*
20 *sanctioned, under any Federal program, including pro-*
21 *grams of the Department of Defense or the Veterans’*
22 *Administration, involving the provision of health care,*
23 *or under a State health care program (as defined in*
24 *subsection (h)).*

1 “(6) CLAIMS FOR EXCESSIVE CHARGES OR UN-
2 NECESSARY SERVICES AND FAILURE OF CERTAIN
3 ORGANIZATIONS TO FURNISH MEDICALLY NECES-
4 SARY SERVICES.—Any individual or entity that the
5 Secretary determines—

6 “(A) has submitted or caused to be submitted
7 bills or requests for payment under title XVIII or
8 a State health care program containing charges
9 (or, in applicable cases, requests for payment of
10 costs) for items or services furnished substantially
11 in excess of such individual’s or entity’s custom-
12 ary charges (or, in applicable cases, substantially
13 in excess of such individual’s or entity’s costs) for
14 such items or services, unless the Secretary finds
15 there is good cause for such bills or requests con-
16 taining such charges or costs;

17 “(B) has furnished items or services to pa-
18 tients (whether or not eligible for benefits under
19 title XVIII or a State health care program) sub-
20 stantially in excess of the needs of such patients
21 or of a quality which fails to meet professionally
22 recognized standards of health care;

23 “(C) is—

24 “(i) a health maintenance organization
25 (as defined in section 1903(m)) providing

1 items and services under a State plan ap-
2 proved under title XIX, or

3 “(ii) an entity furnishing services under
4 a waiver approved under section 1915(b)(1),
5 and has failed substantially to provide medically
6 necessary items and services that are required
7 (under law or the contract with the State under
8 title XIX) to be provided to individuals covered
9 under that plan or waiver, if the failure has ad-
10 versely affected (or has a substantial likelihood of
11 adversely affecting) these individuals; or

12 “(D) is an entity providing items and serv-
13 ices as an eligible organization under a risk-shar-
14 ing contract under section 1876 and has failed
15 substantially to provide medically necessary items
16 and services that are required (under law or such
17 contract) to be provided to individuals covered
18 under the risk-sharing contract, if the failure has
19 adversely affected (or has a substantial likelihood
20 of adversely affecting) these individuals.

21 “(7) FRAUD, KICKBACKS, AND OTHER PROHIB-
22 ITED ACTIVITIES.—Any individual or entity that the
23 Secretary determines has committed an act which is
24 described in section 1128A or section 1128B.

1 “(8) *ENTITIES CONTROLLED BY A SANCTIONED*
 2 *INDIVIDUAL.—Any entity with respect to which the*
 3 *Secretary determines that a person—*

4 “(A)(i) *with an ownership or control interest*
 5 *(as defined in section 1124(a)(3)) in that entity,*
 6 *or*

7 “(ii) *who is an officer, director, agent, or*
 8 *managing employee (as defined in section*
 9 *1126(b)) of that entity—*
 10 *is a person—*

11 “(B)(i) *who has been convicted of any of-*
 12 *fense described in subsection (a) or in paragraph*
 13 *(1), (2), or (3) of this subsection;*

14 “(ii) *against whom a civil monetary penalty*
 15 *has been assessed under section 1128A; or*

16 “(iii) *who has been excluded from participa-*
 17 *tion under a program under title XVIII or under*
 18 *a State health care program.*

19 “(9) *FAILURE TO DISCLOSE REQUIRED INFOR-*
 20 *MATION.—Any entity that did not fully and accurately*
 21 *make any disclosure required of it by section 1124 or*
 22 *section 1126.*

23 “(10) *FAILURE TO SUPPLY REQUESTED INFOR-*
 24 *MATION ON SUBCONTRACTORS AND SUPPLIERS.—*
 25 *Any disclosing entity (as defined in section*

1 1124(a)(2)) that fails to supply (within such period as
2 may be specified by the Secretary in regulations) upon
3 request specifically addressed to the entity by the Sec-
4 retary—

5 “(A) full and complete information as to the
6 ownership of a subcontractor (as defined by the
7 Secretary in regulations) with whom the entity
8 has had, during the previous 12 months, business
9 transactions in an aggregate amount in excess of
10 \$25,000, or

11 “(B) full and complete information as to any
12 significant business transactions (as defined by
13 the Secretary in regulations), occurring during
14 the five-year period ending on the date of such re-
15 quest, between the entity and any wholly owned
16 supplier or between the entity and any subcon-
17 tractor.

18 “(11) *FAILURE TO SUPPLY PAYMENT INFORMA-*
19 *TION.*—Any individual or entity furnishing items or
20 services for which payment may be made under title
21 XVIII or a State health care program that fails to
22 provide such information as the Secretary or the ap-
23 propriate State agency finds necessary to determine
24 whether such payments are or were due and the
25 amounts thereof, or has refused to permit such exami-

1 *nation of its records by or on behalf of the Secretary or*
2 *that agency as may be necessary to verify such infor-*
3 *mation.*

4 *“(12) FAILURE TO GRANT IMMEDIATE*
5 *ACCESS.—Any individual or entity that fails to grant*
6 *immediate access, upon reasonable request (as defined*
7 *by the Secretary in regulations) to any of the follow-*
8 *ing:*

9 *“(A) To the Secretary, or to the agency used*
10 *by the Secretary, for the purpose specified in the*
11 *first sentence of section 1864(a) (relating to com-*
12 *pliance with conditions of participation or pay-*
13 *ment).*

14 *“(B) To the Secretary or the State agency,*
15 *to perform the reviews and surveys required under*
16 *State plans under paragraphs (26), (31), and*
17 *(33) of section 1902(a) and under section*
18 *1903(g).*

19 *“(C) To the Inspector General of the De-*
20 *partment of Health and Human Services, for the*
21 *purpose of reviewing records, documents, and*
22 *other data necessary to the performance of the*
23 *statutory functions of the Inspector General.*

1 “(D) To a State medicaid fraud control unit
2 (as defined in section 1903(q)), for the purpose of
3 conducting activities described in that section.

4 “(13) FAILURE TO TAKE CORRECTIVE
5 ACTION.—Any hospital that fails to comply substan-
6 tially with a corrective action required under section
7 1886(f)(2)(B).

8 Subject to subsection (d)(2), the Secretary shall exercise the
9 authority under this subsection in a manner that results in
10 an individual’s or entity’s exclusion from all the programs
11 under title XVIII and all the State health care programs in
12 which the individual or entity may otherwise participate.

13 “(c) NOTICE, EFFECTIVE DATE, AND PERIOD OF
14 EXCLUSION.—(1) An exclusion under this section or under
15 section 1128A shall be effective at such time and upon such
16 reasonable notice to the public and to the individual or entity
17 excluded as may be specified in regulations consistent with
18 paragraph (2).

19 “(2)(A) Except as provided in subparagraph (B), such
20 an exclusion shall be effective with respect to services fur-
21 nished to an individual on or after the effective date of the
22 exclusion.

23 “(B) Unless the Secretary determines that the health
24 and safety of individuals receiving services warrants the ex-
25 clusion taking effect earlier, an exclusion shall not apply to

1 *payments made under title XVIII or under a State health*
2 *care program for—*

3 “(i) *inpatient institutional services furnished to*
4 *an individual who was admitted to such institution*
5 *before the date of the exclusion, or*

6 “(ii) *home health services and hospice care fur-*
7 *nished to an individual under a plan of care estab-*
8 *lished before the date of the exclusion,*
9 *until the passage of 30 days after the effective date of the*
10 *exclusion.*

11 “(3)(A) *The Secretary shall specify, in the notice of ex-*
12 *clusion under paragraph (1) and the written notice under*
13 *section 1128A, the minimum period (or, in the case of an*
14 *exclusion under subsection (b)(12), the period) of the exclu-*
15 *sion.*

16 “(B) *In the case of an exclusion under subsection*
17 *(a)(1), the minimum period of the exclusion may not be less*
18 *than five years.*

19 “(C) *In the case of an exclusion under subsection*
20 *(b)(12), the period of the exclusion shall be equal to the sum*
21 *of—*

22 “(i) *the length of the period in which the individ-*
23 *ual or entity failed to grant the immediate access de-*
24 *scribed in that subsection, and*

1 “(ii) an additional period, not to exceed 90 days,
2 set by the Secretary.

3 “(d) NOTICE TO STATE AGENCIES AND EXCLUSION
4 UNDER STATE HEALTH CARE PROGRAMS.—(1) The Sec-
5 retary shall promptly notify each appropriate State agency
6 administering or supervising the administration of each
7 State health care program (and, in the case of an exclusion
8 effected pursuant to subsection (a) and to which section
9 304(a)(5) of the Controlled Substances Act may apply, the
10 Attorney General)—

11 “(A) of the fact and circumstances of each exclu-
12 sion effected against an individual or entity under this
13 section or section 1128A, and

14 “(B) the period (described in paragraph (2)) for
15 which the State agency is directed to exclude the indi-
16 vidual or entity from participation in the State health
17 care program.

18 “(2)(A) Except as provided in subparagraph (B), the
19 period of the exclusion under a State health care program
20 under paragraph (1) shall be the same as any period of exclu-
21 sion under a program under title XVIII.

22 “(B) The Secretary may waive an individual’s or enti-
23 ty’s exclusion under a State health care program under para-
24 graph (1) if the Secretary receives and approves a request for
25 the waiver with respect to the individual or entity from the

1 *State agency administering or supervising the administra-*
2 *tion of the program.*

3 “(e) *NOTICE TO STATE LICENSING AGENCIES.—The*
4 *Secretary shall—*

5 “(1) *promptly notify the appropriate State or*
6 *local agency or authority, having responsibility for the*
7 *licensing or certification of an individual or entity ex-*
8 *cluded (or directed to be excluded) from participation*
9 *under this section or section 1128A, of the fact and*
10 *circumstances of the exclusion,*

11 “(2) *request that appropriate investigations be*
12 *made and sanctions invoked in accordance with appli-*
13 *cable State law and policy, and*

14 “(3) *request that the State or local agency or au-*
15 *thority keep the Secretary and the Inspector General*
16 *in the Department of Health and Human Services*
17 *fully and currently informed with respect to any ac-*
18 *tions taken in response to the request.*

19 “(f) *NOTICE, HEARING, AND JUDICIAL REVIEW.—*
20 *(1) Any individual or entity that is excluded (or directed to*
21 *be excluded) from participation under this section (or is*
22 *denied termination of the exclusion under subsection (g)) is*
23 *entitled to reasonable notice and opportunity for a hearing*
24 *thereon by the Secretary to the same extent as is provided in*

1 section 205(b), and to judicial review of the Secretary's final
2 decision after such hearing as is provided in section 205(g).

3 “(2) The provisions of section 205(h) shall apply with
4 respect to this section and sections 1128A and 1156 to the
5 same extent as it is applicable with respect to title II.

6 “(g) APPLICATION FOR TERMINATION OF EXCLU-
7 SION.—(1) An individual or entity excluded (or directed to
8 be excluded) from participation under this section (other than
9 under subsection (b)(12)) or section 1128A may apply to the
10 Secretary, in the manner specified by the Secretary in regu-
11 lations and at the end of the minimum period of exclusion
12 provided under subsection (c)(3) and at such other times as
13 the Secretary may provide, for termination of the exclusion
14 effected under this section or section 1128A.

15 “(2) The Secretary may terminate the exclusion if the
16 Secretary determines, on the basis of the conduct of the appli-
17 cant which occurred after the date of the notice of exclusion or
18 which was unknown to the Secretary at the time of the exclu-
19 sion, that—

20 “(A) there is no basis under subsection (a) or (b)
21 or section 1128A(a) for a continuation of the exclu-
22 sion, and

23 “(B) there are reasonable assurances that the
24 types of actions which formed the basis for the original
25 exclusion have not recurred and will not recur.

1 “(3) *The Secretary shall promptly notify each appropri-*
 2 *ate State agency administering or supervising the adminis-*
 3 *tration of each State health care program (and, in the case of*
 4 *an exclusion effected pursuant to subsection (a) and to which*
 5 *section 304(a)(5) of the Controlled Substances Act may*
 6 *apply, the Attorney General) of the fact and circumstances of*
 7 *each termination of exclusion made under this subsection.*

8 “(h) *DEFINITION OF STATE HEALTH CARE PRO-*
 9 *GRAM.—For purposes of this section and sections 1128A and*
 10 *1128B, the term ‘State health care program’ means—*

11 “(1) *a State plan approved under title XIX,*

12 “(2) *any program receiving funds under title V or*
 13 *from an allotment to a State under such title, or*

14 “(3) *any program receiving funds under title XX*
 15 *or from an allotment to a State under such title.”.*

16 **SEC. 3. CIVIL MONETARY PENALTIES.**

17 (a) *GROUND FOR IMPOSITION.—(1) Subsection*
 18 *(a)(1) of section 1128A (42 U.S.C. 1320a-7a) is amended*
 19 *by striking out “the Secretary determines” and all that fol-*
 20 *lows through “; or” and inserting in lieu thereof “the Secre-*
 21 *tary determines—*

22 “(A) *is for a medical or other item or service*
 23 *that the person knows or has reason to know was*
 24 *not provided as claimed,*

1 “(B) is for a medical or other item or service
2 and the person knows or has reason to know the
3 claim is false or fraudulent,

4 “(C) is presented for a physician’s service
5 (or an item or service incident to a physician’s
6 service) by a person who knows or has reason to
7 know that the individual who furnished (or super-
8 vised the furnishing of) the service—

9 “(i) was not licensed as a physician,

10 “(ii) was licensed as a physician, but
11 such license had been obtained through a
12 misrepresentation of material fact (including
13 cheating on an examination required for li-
14 censing), or

15 “(iii) represented to the patient at the
16 time the service was furnished that the phy-
17 sician was certified in a medical specialty by
18 a medical specialty board when the individ-
19 ual was not so certified, or

20 “(D) is for a medical or other item or service
21 furnished during a period in which the person
22 was excluded under the program under which the
23 claim was made pursuant to a determination by
24 the Secretary under this section or under section
25 1128, 1156, 1160(b) (as in effect on September

1 2, 1982), 1862(d) (as in effect on the date of the
2 enactment of the Medicare and Medicaid Patient
3 and Program Protection Act of 1985), or 1866(b);
4 or”.

5 (2) Subsection (a)(2)(B) of such section is amended by
6 inserting “(or other requirement of a State plan under title
7 XIX)” after “State agency”.

8 (3) Subsection (a) of such section is further amended by
9 adding at the end thereof the following new sentence: “In
10 addition the Secretary may make a determination in the
11 same proceeding to exclude the person from participation in
12 the programs under title XVIII and to direct the appropriate
13 State agency to exclude the person from participation in any
14 State health care program.”.

15 (4) No civil penalty or assessment may be imposed
16 under section 1128A(a) of the Social Security Act in the
17 case of a claim filed before August 13, 1981, if liability for
18 the amount of the penalty or assessment could not have been
19 imposed with respect to the claim under section 3729 of title
20 31, United States Code (relating to false claims).

21 (b) *STATUTE OF LIMITATION ON ACTIONS.*—Subsec-
22 tion (b)(1) of such section is amended by adding at the end
23 the following new sentences: “The Secretary may not initiate
24 an action under this section with respect to any claim later
25 than six years after the date the claim was presented. The

1 *Secretary may initiate an action under this section by per-*
 2 *sonal service or by mailing, by registered or certified mail,*
 3 *the notice required by paragraph (2).”.*

4 (c) *CONFORMING AMENDMENT.*—Subsections (b), (c),
 5 (f), and (g) of such section are each amended by striking out
 6 “penalty or assessment” and inserting in lieu thereof “penal-
 7 ty, assessment, or exclusion” each place it appears.

8 (d) *PRO-RATED PAYMENT OF RECOVERIES TO*
 9 *STATE AGENCIES.*—Subsection (e)(1)(A) of such section is
 10 amended by striking out “equal to the State’s share of the
 11 amount paid by the State agency” and inserting in lieu
 12 thereof “bearing the same proportion to the total amount re-
 13 covered as the State’s share of the amount paid by the State
 14 agency for such claim bears to the total amount paid”.

15 (e) *NOTICE TO STATE AGENCIES.*—Subsection (g) of
 16 such section is further amended by inserting “the appropriate
 17 State agency or agencies administering or supervising the
 18 administration of State health care programs (as defined in
 19 section 1128(h)),” after “professional organization,”.

20 (f) *APPLICATION OF SUBPOENA POWER AND INJUNC-*
 21 *TIVE POWERS.*—Such section is further amended by adding
 22 at the end the following new subsections:

23 “(i) The provisions of subsections (d) and (e) of section
 24 205 shall apply with respect to this section to the same extent
 25 as they are applicable with respect to title II.

1 “(j) Whenever the Secretary has reason to believe that
 2 any person has engaged, is engaging, or is about to engage in
 3 any activity which makes the person subject to a civil monetary
 4 penalty under this section, the Secretary may bring an
 5 action in an appropriate district court of the United States
 6 (or, if applicable, a United States court of any territory) to
 7 enjoin such activity, or to enjoin the person from concealing,
 8 removing, or encumbering assets which may be required in
 9 order to pay a civil monetary penalty if any such penalty
 10 were to be imposed or to seek other appropriate relief.”.

11 **SEC. 4. CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE**
 12 **AND STATE HEALTH CARE PROGRAMS.**

13 (a) *TECHNICAL AMENDMENTS.*—Section 1909 (42
 14 U.S.C. 1396h) is amended—

15 (1) by amending the heading to read as follows:
 16 “*CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE*
 17 *OR STATE HEALTH CARE PROGRAMS*”;

18 (2) in subsection (a)(1), by striking out “a State
 19 plan approved under this title” and inserting in lieu
 20 thereof “a program under title XVIII or a State health
 21 care program (as defined in section 1128(h))”;

22 (3) in the matter in subsection (a) following para-
 23 graph (4), by striking out “this title” the first place it
 24 appears and inserting in lieu thereof “the program”;

25 (4) in the last sentence of subsection (a), by strik-
 26 ing out “this title” the first place it appears and insert-

ing in lieu thereof "title XIX", and by striking out
 "this title" the second place it appears and inserting in
 lieu thereof "that title";

(5) in paragraphs (1)(A), (1)(B), (2)(A), (2)(B),
 and (3)(A) of subsection (b), by striking out "this
 title" and inserting in lieu thereof "title XVIII or a
 State health care program" each place it appears;

(6) in subsection (c), by striking out "or home
 health agency (as those terms are employed in this
 title)" and inserting in lieu thereof "home health
 agency, or other entity for which certification is re-
 quired under title XVIII or a State health care pro-
 gram"; and

(7) in subsection (d), by striking out "this title"
 and inserting in lieu thereof "title XIX" each place it
 appears.

(b) *CRIMINAL PENALTIES FOR PHYSICIAN MISREP-
 RESENTATIONS.*—Subsection (a) of such section is further
 amended—

(1) by striking out "or" at the end of paragraph
 (3),

(2) by inserting "or" at the end of paragraph (4),
 and

(3) by inserting after paragraph (4) the following
 new paragraph:

1 “(5) presents or causes to be presented a claim for
 2 a physician’s service for which payment may be made
 3 under a program under title XVIII or a State health
 4 care program and knows that the individual who fur-
 5 nished the service either—

6 “(A) was not licensed as a physician, or

7 “(B) was licensed as a physician, but such
 8 license had been obtained through a misrepresen-
 9 tation of material fact (including cheating on an
 10 examination required for licensing),”.

11 (c) *REDESIGNATION OF SECTION 1877(d) AS SEC-*
 12 *TION 1128B(e).*—Subsection (d) of section 1877 (42 U.S.C.
 13 1395nn) is redesignated as subsection (e) and is transferred
 14 and inserted in section 1909 at the end thereof.

15 (d) *REDESIGNATION OF SECTION 1909 AS SECTION*
 16 *1128 B.*—Section 1909, as amended by subsections (a), (b),
 17 and (c) of this section, is redesignated as section 1128B and
 18 is transferred to title XI and inserted immediately after sec-
 19 tion 1128A.

20 (e) *REPEAL.*—Section 1877 (other than subsection (d)
 21 thereof which was transferred under subsection (c) of this sec-
 22 tion) is repealed.

1 SEC. 5. INFORMATION CONCERNING SANCTIONS TAKEN BY
 2 STATE LICENSING AUTHORITIES AGAINST
 3 HEALTH CARE PRACTITIONERS AND PROVIDERS.

4 (a) MEDICAID PLAN REQUIREMENT.—Section
 5 1902(a) (42 U.S.C. 1396a(a)) is amended—

6 (1) by striking out “and” at the end of paragraph
 7 (45),

8 (2) by striking out the period at the end of para-
 9 graph (46) and inserting in lieu thereof “; and”, and

10 (3) by inserting after paragraph (46) the follow-
 11 ing new paragraph:

12 “(47) provide that the State will provide informa-
 13 tion and access to certain information respecting sanc-
 14 tions taken against health care practitioners and pro-
 15 viders by State licensing authorities in accordance
 16 with section 1919.”

17 (b) INFORMATION REQUIRED.—Title XIX is amended
 18 by adding at the end the following new section:

19 “INFORMATION CONCERNING SANCTIONS TAKEN BY
 20 STATE LICENSING AUTHORITIES AGAINST HEALTH
 21 CARE PRACTITIONERS AND PROVIDERS

22 “SEC. 1919. (a) INFORMATION REPORTING RE-
 23 QUIREMENT.—The requirement referred to in section
 24 1902(a)(47) is that the State must provide for the following:

25 “(1) INFORMATION REPORTING SYSTEM.—The
 26 State must have in effect a system of reporting the fol-

1 *lowing information with respect to formal proceedings*
2 *(as defined by the Secretary in regulations) concluded*
3 *against a health care practitioner or entity by any au-*
4 *thority of the State (or of a political subdivision there-*
5 *of) responsible for the licensing of health care practi-*
6 *tioners or entities:*

7 *“(A) Any adverse action taken by such li-*
8 *censing authority as a result of the proceeding, in-*
9 *cluding any revocation or suspension of a license*
10 *(and the length of any such suspension), repri-*
11 *mand, censure, or probation.*

12 *“(B) Any dismissal or closure of the proceed-*
13 *ings by reason of the practitioner or entity surren-*
14 *dering the license or leaving the State or jurisdic-*
15 *tion.*

16 *“(C) Any other loss of the license of the*
17 *practitioner or entity, whether by operation of*
18 *law, voluntary surrender, or otherwise.*

19 *“(2) ACCESS TO DOCUMENTS.—The State must*
20 *provide the Secretary (or an entity designated by the*
21 *Secretary) with access to such documents of the au-*
22 *thority described in paragraph (1) as may be necessary*
23 *for the Secretary to determine the facts and circum-*
24 *stances concerning the actions and determinations de-*

1 scribed in such paragraph for the purpose of carrying
2 out this Act.

3 “(b) *FORM OF INFORMATION.*—The information de-
4 scribed in subsection (a)(1) shall be provided to the Secretary
5 (or, under suitable arrangements made by the Secretary, to
6 another entity) in such a form and manner as the Secretary
7 determines to be appropriate in order to provide for activities
8 of the Secretary under this Act and in order to provide, di-
9 rectly or through suitable arrangements made by the Secre-
10 tary, information—

11 “(1) to licensing authorities described in subsec-
12 tion (a)(1),

13 “(2) to State agencies administering or supervis-
14 ing the administration of State health care programs
15 (as defined in section 1128(h)),

16 “(3) to utilization and quality control peer review
17 organizations described in part B of title XI, and

18 “(4) to State medicaid fraud control units (as de-
19 fined in section 1903(q)),

20 in order for such authorities to determine the fitness of indi-
21 viduals to provide health care services, to protect the health
22 and safety of individuals receiving health care through such
23 programs, and to protect the fiscal integrity of such programs.

24 “(c) *CONFIDENTIALITY OF INFORMATION PROVIDED.*—The Secretary shall provide for suitable safeguards for
25

1 *the confidentiality of such of the information furnished under*
2 *subsection (a) as is not otherwise available to the public.”.*

3 **SEC. 6. OBLIGATION OF HEALTH CARE PRACTITIONERS AND**
4 **PROVIDERS.**

5 *Section 1156 (42 U.S.C. 1320c-5) is amended—*

6 *(1) by striking out “title XVIII” and “such title”*
7 *in subsection (a) and inserting in lieu thereof “this*
8 *Act” in each instance, and*

9 *(2) by striking out “title XVIII” in subsection*
10 *(b) and inserting in lieu thereof “this Act” each place*
11 *it appears.*

12 **SEC. 7. EXCLUSION UNDER THE MEDICAID PROGRAM.**

13 *Section 1902 (42 U.S.C. 1396b) is amended by insert-*
14 *ing after subsection (f) the following new subsection:*

15 *“(g)(1) In addition to any other authority, a State may*
16 *exclude any individual or entity for purposes of participating*
17 *under the State plan under this title for any reason for which*
18 *the Secretary could exclude the individual or entity from par-*
19 *ticipation in a program under title XVIII under section*
20 *1128, 1128A, or 1866(b)(2).*

21 *“(2) In order for a State to receive payments for medi-*
22 *cal assistance under section 1903(a), with respect to pay-*
23 *ments the State makes to a health maintenance organization*
24 *(as defined in section 1903(m)) or to an entity furnishing*
25 *services under a waiver approved under section 1915(b)(1),*

1 *the State must provide that it will exclude from participation,*
 2 *as such an organization or entity, any organization or entity*
 3 *that—*

4 “(A) could be excluded under section 1128(b)(8)
 5 *(relating to owners and managing employees who have*
 6 *been convicted of certain crimes or received other sanc-*
 7 *tions), or*

8 “(B) has, directly or indirectly, a substantial con-
 9 *tractual relationship (as defined by the Secretary) with*
 10 *an individual or entity that is described in section*
 11 *1128(b)(8)(B).*

12 “(3) As used in this subsection, the term ‘exclude’ in-
 13 *cludes the refusal to enter into or renew a participation agree-*
 14 *ment or the termination of such an agreement.”.*

15 **SEC. 8. MISCELLANEOUS AND CONFORMING AMENDMENTS.**

16 (a) **MATERNAL AND CHILD HEALTH PROGRAM.—**
 17 *Section 504(b) (42 U.S.C. 704(b)) is amended—*

18 (1) *by striking out “or” at the end of paragraph*
 19 (4),

20 (2) *by striking out the period at the end of para-*
 21 *graph (5) and inserting in lieu thereof “; or”, and*

22 (3) *by adding at the end thereof the following new*
 23 *paragraph:*

24 “(6) *payment for any item or service furnished by*
 25 *an individual or entity excluded from participation in*

1 the program under this title pursuant to section 1128
2 or section 1128A.”.

3 (b) *DISCLOSURE REQUIREMENTS.*—(1) Subsection
4 (a) of section 1126 (42 U.S.C. 1320a-5) is amended—

5 (A) in the first sentence, by striking out “or other
6 institution” and all that follows through the period at
7 the end and inserting in lieu thereof “or other entity
8 (other than an individual practitioner or group of prac-
9 titioners) shall be required to disclose to the Secretary
10 or to the appropriate State agency the name of any
11 person that is a person described in subparagraphs (A)
12 and (B) of section 1128(b)(8).”, and

13 (B) in the second sentence, by striking out “insti-
14 tution, organization, or agency” and inserting in lieu
15 thereof “entity”.

16 (2) Subsection (b) of such section is amended by strik-
17 ing out “institution, organization, or agency” and inserting
18 in lieu thereof “entity” each place it appears.

19 (c) *MEDICARE PAYMENTS.*—(1) Section 1862 (42
20 U.S.C. 1395y) is amended—

21 (A) by striking out subsection (d), and

22 (B) by amending subsection (e) to read as follows:

23 “(e) No payment may be made under this title with re-
24 spect to any item or service furnished by an individual or
25 entity during any period when the individual or entity is

1 *excluded from participation in a program under this title*
 2 *pursuant to section 1128 or section 1128A.”*

3 (2) *Section 1842(j) (42 U.S.C. 1395u(j)) is amend-*
 4 *ed—*

5 (A) *in paragraph (2)—*

6 (i) *by amending subparagraph (A) to read as*
 7 *follows:*

8 “(A) *excluding a physician from participation in*
 9 *the programs under this title for a period not to exceed*
 10 *5 years, in accordance with the procedures of subsec-*
 11 *tions (c), (f), and (g) of section 1128, or”, and*

12 (ii) *by striking out “barred from participa-*
 13 *tion in the program” in the second sentence and*
 14 *inserting in lieu thereof “excluded from participa-*
 15 *tion in the programs”; and*

16 (B) *by striking out “bar” in paragraph (3)(A)*
 17 *and inserting in lieu thereof “exclude”.*

18 (3) *Section 1862(h)(4) (42 U.S.C. 1395y(h)(4)) is*
 19 *amended by striking out “paragraphs (2) and (3) of subsec-*
 20 *tion 1862(d)” and inserting in lieu thereof “subsections (c),*
 21 *(f), and (g) of section 1128”.*

22 (4) *Paragraph (3) of section 1886(f) (42 U.S.C.*
 23 *1395ww(f)) is amended to read as follows:*

24 “(3) *The provisions of subsections (c) through (g) of sec-*
 25 *tion 1128 shall apply to determinations made under para-*

1 graph (2) in the same manner as they apply to exclusions
2 effected under section 1128(b)(13).”.

3 (d) *TERMINATION OF PROVIDER AGREEMENTS*
4 *UNDER MEDICARE.*—Section 1866 (42 U.S.C. 1395cc) is
5 amended—

6 (1) by striking out paragraph (3) of subsection
7 (a);

8 (2) by amending subsection (b) to read as follows:

9 “(b)(1) A provider of services may terminate an agree-
10 ment with the Secretary under this section at such time and
11 upon such notice to the Secretary and the public as may be
12 provided in regulations, except that notice of more than six
13 months shall not be required.

14 “(2) The Secretary may refuse to enter into an agree-
15 ment under this section or, upon such reasonable notice to the
16 provider and the public as may be specified in regulations,
17 may refuse to renew or may terminate such an agreement
18 after the Secretary—

19 “(A) has determined that the provider fails to
20 comply substantially with the provisions of the agree-
21 ment, with the provisions of this title and regulations
22 thereunder, or with a corrective action required under
23 section 1886(f)(2)(B),

1 “(B) has determined that the provider fails sub-
2 stantially to meet the applicable provisions of section
3 1861, or

4 “(C) has excluded the provider from participation
5 in a program under this title pursuant to section 1128
6 or section 1128A.

7 “(3) A termination of an agreement or a refusal to
8 renew an agreement under this subsection shall be effective
9 on the same date, and with respect to the same items and
10 services, as an exclusion from participation under the pro-
11 grams under this title would become effective under section
12 1128(c).”;

13 (3) in paragraphs (1) and (3) of subsection (c), by
14 striking out “an agreement filed under this title by a
15 provider of services has been terminated by the Secre-
16 tary” and inserting in lieu thereof “the Secretary has
17 terminated or has refused to renew an agreement under
18 this title with a provider of services”;

19 (4) by inserting “or nonrenewal” in subsection (c)
20 after “termination” each place it appears; and

21 (5) by adding at the end the following new subsec-
22 tion:

23 “(g)(1) Except as provided in paragraph (2), an institu-
24 tion or agency dissatisfied with a determination by the Secre-
25 tary that it is not a provider of services or with a determina-

tion described in subsection (b)(2) shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

“(2) An institution or agency is not entitled to separate notice and opportunity for a hearing under both section 1128 and this section with respect to a determination or determinations based on the same underlying facts and issues.”.

(e) *CONFORMING AMENDMENT*.—Section 1869 (42 U.S.C. 1395ff) is amended by striking out subsection (c).

(f) *MEDICAID PLAN REVISIONS*.—Section 1902(a) (42 U.S.C. 1396b(a)) is amended—

(1) in paragraph (23), by inserting “subsection (g) and in” after “except as provided in”,

(2) in paragraph (38), by striking out “respectively, (A)” and all that follows up to the semicolon at the end and inserting in lieu thereof “the information described in section 1128(b)(9)”, and

(3) in paragraph (39)—

(A) by striking out “bar” and inserting in lieu thereof “exclude”,

(B) by striking out “person” and inserting in lieu thereof “individual or entity” each place it appears, and

1 (C) by inserting “or section 1128A” after
2 “section 1128”.

3 (g) *DENIAL OF FEDERAL FINANCIAL PARTICIPATION*
4 *UNDER MEDICAID.*—Paragraph (2) of section 1903(i) (42
5 *U.S.C. 1396b(i)*) is amended to read as follows:

6 “(2) with respect to any amount expended for
7 items or services furnished under the plan by any indi-
8 vidual or entity during any period when the individual
9 or entity is excluded from participation in the State
10 plan under this title pursuant to section 1128 or sec-
11 tion 1128A; or”.

12 (h) *OTHER MEDICAID CONFORMING AMEND-*
13 *MENTS.*—(1) Subsection (n) of section 1903 (42 *U.S.C.*
14 *1396b*) is repealed.

15 (2) Paragraph (2) of section 1915(a) (42 *U.S.C.*
16 *1396n(a)*) is amended to read as follows:

17 “(2) restricts for a reasonable period of time the
18 provider or providers from which an individual (eligi-
19 ble for medical assistance for items or services under
20 the State plan) can receive such items or services, if—

21 “(A) the State has found, after notice and
22 opportunity for a hearing (in accordance with pro-
23 cedures established by the State), that the individ-
24 ual has utilized such items or services at a fre-
25 quency or amount not medically necessary (as de-

1 *terminated in accordance with utilization guidelines*
 2 *established by the State), and*

3 “(B) under such restriction, individuals eli-
 4 *gible for medical assistance for such services have*
 5 *reasonable access (taking into account geographic*
 6 *location and reasonable travel time) to such serv-*
 7 *ices of adequate quality.”.*

8 (i) *TITLE XX.—Section 2005(a) (42 U.S.C.*
 9 *1397d(a)) is amended—*

10 (1) *by striking out “or” at the end of paragraph*
 11 (7),

12 (2) *by striking out the period at the end of para-*
 13 *graph (8) and inserting in lieu thereof “; or”, and*

14 (3) *by adding at the end thereof the following new*
 15 *paragraph:*

16 “(9) *for payment for any item or service fur-*
 17 *nished by a person excluded from participation in the*
 18 *program under this title pursuant to section 1128 or*
 19 *section 1128A.”.*

20 (j) *DENIAL, REVOCATION, OR SUSPENSION OF REG-*
 21 *ISTRATION TO MANUFACTURE, DISTRIBUTE, OR DIS-*
 22 *PENSE A CONTROLLED SUBSTANCE FOR ENTITIES EX-*
 23 *CLUDED FROM THE MEDICARE PROGRAM.—Section*
 24 *304(a) of the Controlled Substances Act (21 U.S.C. 824(a))*
 25 *is amended—*

1 (1) by striking out “or” at the end of paragraph

2 (3),

3 (2) by striking out the period at the end of para-
4 graph (4) and inserting in lieu thereof “; or”, and

5 (3) by inserting after paragraph (4) the following
6 new paragraph:

7 “(5) has been excluded (or directed to be ex-
8 cluded) from participation in a program pursuant to
9 section 1128(a) of the Social Security Act.”.

10 **SEC. 9. CLARIFICATION OF MEDICAID MORATORIUM PROVI-**
11 **SIONS OF DEFICIT REDUCTION ACT OF 1984.**

12 Section 2373(c) of the Deficit Reduction Act of 1984
13 (Public Law 98-369; 98 Stat. 1112) is amended—

14 (1) in paragraph (1)—

15 (A) by inserting “(whether or not approved)”
16 after “such State’s plan”,

17 (B) by inserting “(including any part of the
18 plan operating pursuant to section 1902(f) of that
19 Act), or the operation thereunder,” after “Social
20 Security Act”, and

21 (C) by inserting “(or its operation’s)” after
22 “such plan’s”; and

23 (2) by adding at the end the following new para-
24 graph:

1 “(5) *In this subsection, a State plan is considered to*
 2 *include any amendment or other change in the plan which is*
 3 *submitted by a State, or for which the Secretary otherwise*
 4 *has notice, whether before or after the date of enactment of the*
 5 *Deficit Reduction Act of 1984 and whether or not the amend-*
 6 *ment or change was approved, disapproved, acted upon, or*
 7 *not acted upon by the Secretary.”.*

8 **SEC. 10. EFFECTIVE DATES.**

9 (a) *IN GENERAL.—Except as provided in subsections*
 10 *(b), (c), (d), and (e), the amendments made by this Act shall*
 11 *become effective at the end of the fourteen-day period begin-*
 12 *ning on the date of the enactment of this Act and shall not*
 13 *apply to administrative proceedings commenced before the*
 14 *end of such period.*

15 (b) *MANDATORY MINIMUM EXCLUSIONS APPLY PRO-*
 16 *SPECTIVELY.—Section 1128(c)(3)(B) of the Social Securi-*
 17 *ty Act (as amended by this Act), which requires an exclusion*
 18 *of not less than five years in the case of certain exclusions,*
 19 *shall not apply to exclusions based on convictions occurring*
 20 *before the date of the enactment of this Act.*

21 (c) *EFFECTIVE DATE FOR CHANGES IN MEDICAID*
 22 *LAW.—(1) The amendments made by sections 5 and 8(f)*
 23 *apply (except as provided under paragraph (2)) to payments*
 24 *under title XIX of the Social Security Act for calendar*

1 quarters beginning more than thirty days after the date of the
2 enactment of this Act.

3 (2) In the case of a State plan for medical assistance
4 under title XIX of the Social Security Act which the Secre-
5 tary of Health and Human Services determines requires
6 State legislation in order for the plan to meet the additional
7 requirements imposed by the amendments made by this Act,
8 the State plan shall not be regarded as failing to comply with
9 the requirements of such title solely on the basis of its failure
10 to meet these additional requirements before the first day of
11 the first calendar quarter beginning after the close of the first
12 regular session of the State legislature that begins after the
13 date of the enactment of this Act.

14 (3) Subsection (j) of section 1128A of the Social Secu-
15 rity Act (as added by section 3(f) of this Act) takes effect on
16 the date of the enactment of this Act.

17 (d) *PHYSICIAN MISREPRESENTATIONS.*—Clauses (ii)
18 and (iii) of section 1128A(a)(1)(C) of the Social Security
19 Act, as amended by section 3(a)(1)(F) of this Act, and sub-
20 paragraph (B) of section 1128B(a)(5) of the Social Security
21 Act, as amended by section 4(b)(3) of this Act, apply to
22 claims presented for services performed on or after the effec-
23 tive date specified in subsection (a), without regard to the
24 date the misrepresentation of fact was made.

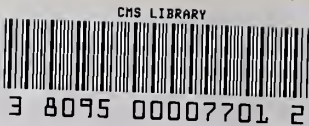
1 (e) *CLARIFICATION OF MEDICAID MORATORIUM.*—

2 *The amendments made by section 9 apply as though they*
3 *were originally included in the enactment of section 2373(c)*
4 *of the Deficit Reduction Act of 1984.*

5 (f) *TREATMENT OF CERTAIN DENIALS OF PAY-*

6 *MENT.*—*For purposes of section 1128(b)(8)(B)(iii) of the*
7 *Social Security Act (as amended by section 2 of this Act), a*
8 *person shall be considered to have been excluded from partici-*
9 *pation under a program under title XVIII if payment to the*
10 *person has been denied under section 1862(d) of the Social*
11 *Security Act, as in effect before the effective date specified in*
12 *subsection (a).*

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Union Calendar No. 92

99TH CONGRESS
1ST SESSION

H. R. 1868

[Report No. 99-80, Parts I and II]

A BILL

To amend the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the anti-fraud provisions of that Act.

MAY 10, 1985

Reported from the Committee on Ways and Means with an amendment

MAY 23, 1985

Reported from the Committee on Energy and Commerce with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed